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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 23.07.2018

+ CRL.REV. P.596/2016 & CRL.M.A.13783-13784/2016

+ CRL.REV. P.107/2017 & CRL.M.A.1831/2017

SUSHIL KUMAR SINGH

..... Petitioner

versus

DR. SHRUTI SINGH

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. D.P. Kaushik, Advocate

For the Respondent : Mr. K.K. Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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23.07.2018

SANJEEV SACHDEVA, J. (ORAL)

CRL.REV. P.596/2016 & CRL.M.A.13783-13784/2016

1. Petitioner impugns order dated 15.01.2016, whereby the Trial Court has proceeded *ex-parte* against the petitioner and listed the case for evidence of the respondent (petitioner before the trial court).

2. Learned counsel for the petitioner submits that petitioner is not

seeking to impugn the part of the order which proceeded *ex-parte* against the petitioner. He is impugning the part of the order which lists the petition for respondent's evidence.

3. The order dated 15.01.2016 reads as follows:

"Notice issued to the respondent on PF has come back unserved with the report that premises was found locked.

Notice issued to the respondent on registered letter come back with the report of refusal.

Petitioner is declared to have served and is proceeded against ex-parte.

Now, to come up for ex-parte petitioner's evidence on 16.03.2016."

4. By the said order the Trial Court has noticed that the petitioner has refused to accept the notice sent by the court and accordingly proceeded *ex-parte*. Learned counsel for the petitioner submits that he has not been given an opportunity to show his bona fide and the Trial Court has fixed date for leading evidence of the petitioner (i.e. respondent herein). This is the part of the order by which the petitioner is aggrieved.

5. The ground raised by the petitioner is that: when on the plain reading of the pleadings, no case is made out; the court should not have placed the matter for evidence. It is further contended that when the Trial Court had more than enough material before it to infer that

the complainant had failed to make out a case for maintenance against the petitioner (her husband); it was not open to the Trial Court to post the matter for evidence. It is submitted that maintainability of a proceeding has to be decided at the outset before taking evidence.

6. As noticed above, the petitioner is not impugning the part of the order whereby he has been proceed *ex-parte* but only that part whereby the case has been fixed for respondents evidence. No revision would lie against the order merely fixing the case for evidence. The Trial Court has not passed any order deciding or adjudicating on the rights of the parties, after proceeding *ex-parte*, the Trial Court has issued a procedural direction fixing the date for respondent's evidence (i.e. petitioner before the Trial Court). The Trial Court has not expressed any view on the rights and contentions of the parties.

7. The proceedings emanate out of an application filed by the respondent under section 125 Cr.P.C. claiming maintenance from her husband (petitioner herein). No error has been committed by the Trial Court in fixing the case for evidence of the petitioner (respondent herein).

8. The petitioner who chooses to refuse to accept the summons issued by the court and fails to file his defence or even appear before the trial court to object to the maintainability cannot be permitted to contend that the court should have decided on the maintainability of

the petition at the outset before the fixing the case for evidence. In the absence of a party appearing and objecting to the maintainability of the petition, the trial court is not to assume that the averments in the petition are false.

9. The stage for the Trial Court to consider the pleadings or rights and contentions of the parties has not yet arisen; the Trial Court would do so after the respondent (i.e. petitioner before the Trial Court) leads evidence.

10. I find no merit in the petition. The petition is dismissed.

CRL.REV. P.107/2017 & CRL.M.A.1831/2017

1. The Petitioner in this petition is aggrieved by the order dated 15.09.2016 whereby the application of the petitioner seeking adjournment of the proceedings *sine die* have been rejected.

2. Learned counsel for the petitioner submits that because of petitioner having been proceeded *ex-parte*, he is precluded from cross-examining the witnesses or raising an objection as to the maintainability of the proceedings or submitting legal propositions objecting to grant of maintenance before the Trial Court.

3. It is settled position of law that a party that has been proceeded *ex-parte* can, without seeking setting aside of *ex-parte* order, can join the proceedings at any stage. The only drawback that such a party would suffer from, is that such a party cannot seek reopening of

proceedings that have already taken place and has to proceed from that stage.

4. In the present case, since the petitioner has not sought setting aside of *ex-parte* order, he cannot seek reopening of the proceedings that have taken place prior to his joining the same and has to proceed from the date he joins. If any witness is produced by the respondent, after he joins, the petitioner is not precluded from cross-examining the said witness, though the right of cross-examination in such a case would be limited to disapproving the case of the respondent. Since petitioner has chosen not to file any defence, petitioner would be precluded from putting his defence to the witness.

5. It is also settled position of law that legal objections to a petition can be taken even at the final stage. Accordingly, if any legal objection is raised by the petitioner objecting to the maintainability of the proceedings, it is open to the Trial Court to consider the same in accordance with law.

6. In my view no error is committed by the trial court in refusing to adjourn the matter *sine-die*.

7. I find no merit in the petition. The same is dismissed with the above observations.

SANJEEV SACHDEVA, J

JULY 23, 2018/ns